

SENATE BILL No. 360

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-17.2-6-14; IC 20-26-5-11; IC 31-19-11-1; IC 31-27-4-13; IC 35-46-1-4.

Synopsis: Neglect of unborn child. Specifies that, for purposes of the statute governing neglect of a dependent, a dependent includes an unborn child at any stage of development, and that a person "having the care of a dependent" includes a person carrying an unborn child. Makes conforming amendments.

Effective: July 1, 2009.

Stutzman

January 8, 2009, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 360

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 12-17.2-6-14, AS AMENDED BY P.L.124-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. The child care ministry must do the following:

(1) Conduct a criminal history check of the child care ministry's employees and volunteers.

(2) Refrain from employing, or allowing to serve as a volunteer, an individual who:

(A) has been convicted of any of the following felonies:

(i) Murder (IC 35-42-1-1).

(ii) Causing suicide (IC 35-42-1-2).

(iii) Assisting suicide (IC 35-42-1-2.5).

(iv) Voluntary manslaughter (IC 35-42-1-3).

(v) Reckless homicide (IC 35-42-1-5).

(vi) Battery (IC 35-42-2-1).

(vii) Aggravated battery (IC 35-42-2-1.5).

(viii) Kidnapping (IC 35-42-3-2).

(ix) Criminal confinement (IC 35-42-3-3).



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- 1 (x) A felony sex offense under IC 35-42-4.
- 2 (xi) Carjacking (IC 35-42-5-2).
- 3 (xii) Arson (IC 35-43-1-1).
- 4 (xiii) Incest (IC 35-46-1-3).
- 5 (xiv) Neglect of a dependent ~~(IC 35-46-1-4(a)(1)~~
- 6 **(IC 35-46-1-4(d)(1) and IC 35-46-1-4(a)(2)):**
- 7 **IC 35-46-1-4(d)(2)).**
- 8 (xv) Child selling ~~(IC 35-46-1-4(d)):~~ **(IC 35-46-1-4(g)).**
- 9 (xvi) A felony involving a weapon under IC 35-47 or
- 10 IC 35-47.5.
- 11 (xvii) A felony relating to controlled substances under
- 12 IC 35-48-4.
- 13 (xviii) An offense relating to material or a performance that
- 14 is harmful to minors or obscene under IC 35-49-3.
- 15 (xix) A felony that is substantially equivalent to a felony
- 16 listed in items (i) through (xviii) for which the conviction
- 17 was entered in another state.
- 18 (B) has been convicted of a misdemeanor related to the health
- 19 or safety of a child; or
- 20 (C) is a person against whom an allegation of child abuse or
- 21 neglect has been substantiated under IC 31-33.
- 22 (3) Maintain records of each criminal history check.
- 23 SECTION 2. IC 20-26-5-11, AS ADDED BY P.L.1-2005,
- 24 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 25 JULY 1, 2009]: Sec. 11. (a) This section applies to:
- 26 (1) a school corporation; and
- 27 (2) an entity:
- 28 (A) with which the school corporation contracts for services;
- 29 and
- 30 (B) that has employees who are likely to have direct, ongoing
- 31 contact with children within the scope of the employees'
- 32 employment.
- 33 (b) A school corporation or entity may use information obtained
- 34 under section 10 of this chapter concerning an individual's conviction
- 35 for one (1) of the following offenses as grounds to not employ or
- 36 contract with the individual:
- 37 (1) Murder (IC 35-42-1-1).
- 38 (2) Causing suicide (IC 35-42-1-2).
- 39 (3) Assisting suicide (IC 35-42-1-2.5).
- 40 (4) Voluntary manslaughter (IC 35-42-1-3).
- 41 (5) Reckless homicide (IC 35-42-1-5).
- 42 (6) Battery (IC 35-42-2-1) unless ten (10) years have elapsed from

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the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(7) Aggravated battery (IC 35-42-2-1.5).

(8) Kidnapping (IC 35-42-3-2).

(9) Criminal confinement (IC 35-42-3-3).

(10) A sex offense under IC 35-42-4.

(11) Carjacking (IC 35-42-5-2).

(12) Arson (IC 35-43-1-1), unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(13) Incest (IC 35-46-1-3).

(14) Neglect of a dependent as a Class B felony ~~(IC 35-46-1-4(b)(2))~~, **(IC 35-46-1-4(e)(2))**, unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(15) Child selling ~~(IC 35-46-1-4(d))~~, **(IC 35-46-1-4(g))**.

(16) Contributing to the delinquency of a minor (IC 35-46-1-8), unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(17) An offense involving a weapon under IC 35-47 or IC 35-47.5, unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(18) An offense relating to controlled substances under IC 35-48-4, unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(19) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3, unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(20) An offense relating to operating a motor vehicle while intoxicated under IC 9-30-5, unless five (5) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(21) An offense that is substantially equivalent to any of the offenses listed in this subsection in which the judgment of conviction was entered under the law of any other jurisdiction.

(c) An individual employed by a school corporation or an entity described in subsection (a) shall notify the governing body of the school corporation, if during the course of the individual's employment,

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the individual is convicted in Indiana or another jurisdiction of an offense described in subsection (b).

SECTION 3. IC 31-19-11-1, AS AMENDED BY P.L.3-2008, SECTION 238, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Whenever the court has heard the evidence and finds that:

- (1) the adoption requested is in the best interest of the child;
- (2) the petitioner or petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education;
- (3) the report of the investigation and recommendation under IC 31-19-8-5 has been filed;
- (4) the attorney or agency arranging an adoption has filed with the court an affidavit prepared by the state department of health under IC 31-19-5-16 indicating whether a man is entitled to notice of the adoption because the man has registered with the putative father registry in accordance with IC 31-19-5;
- (5) proper notice arising under subdivision (4), if notice is necessary, of the adoption has been given;
- (6) the attorney or agency has filed with the court an affidavit prepared by the state department of health under:
 - (A) IC 31-19-6 indicating whether a record of a paternity determination; or
 - (B) IC 16-37-2-2(g) indicating whether a paternity affidavit executed under IC 16-37-2-2.1;
- has been filed in relation to the child;
- (7) proper consent, if consent is necessary, to the adoption has been given;
- (8) the petitioner for adoption is not prohibited from adopting the child as the result of an inappropriate criminal history described in subsection (c) or (d); and
- (9) the person, licensed child placing agency, or county office of family and children that has placed the child for adoption has provided the documents and other information required under IC 31-19-17 to the prospective adoptive parents;

the court shall grant the petition for adoption and enter an adoption decree.

(b) A court may not grant an adoption unless the state department of health's affidavit under IC 31-19-5-16 is filed with the court as provided under subsection (a)(4).

(c) A conviction of a felony or a misdemeanor related to the health and safety of a child by a petitioner for adoption is a permissible basis

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for the court to deny the petition for adoption. In addition, the court may not grant an adoption if a petitioner for adoption has been convicted of any of the felonies described as follows:

- (1) Murder (IC 35-42-1-1).
- (2) Causing suicide (IC 35-42-1-2).
- (3) Assisting suicide (IC 35-42-1-2.5).
- (4) Voluntary manslaughter (IC 35-42-1-3).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Battery as a felony (IC 35-42-2-1).
- (7) Domestic battery (IC 35-42-2-1.3).
- (8) Aggravated battery (IC 35-42-2-1.5).
- (9) Kidnapping (IC 35-42-3-2).
- (10) Criminal confinement (IC 35-42-3-3).
- (11) A felony sex offense under IC 35-42-4.
- (12) Carjacking (IC 35-42-5-2).
- (13) Arson (IC 35-43-1-1).
- (14) Incest (IC 35-46-1-3).
- (15) Neglect of a dependent ~~(IC 35-46-1-4(a)(1))~~ **IC 35-46-1-4(d)(1)** and ~~IC 35-46-1-4(a)(2))~~ **IC 35-46-1-4(d)(2))**.
- (16) Child selling ~~(IC 35-46-1-4(d))~~ **(IC 35-46-1-4(g))**.
- (17) A felony involving a weapon under IC 35-47 or IC 35-47.5.
- (18) A felony relating to controlled substances under IC 35-48-4.
- (19) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.
- (20) A felony that is substantially equivalent to a felony listed in subdivisions (1) through (19) for which the conviction was entered in another state.

However, the court is not prohibited from granting an adoption based upon a felony conviction under subdivision (6), (12), (13), (17), or (18), or its equivalent under subdivision (20), if the offense was not committed within the immediately preceding five (5) year period.

(d) A court may not grant an adoption if the petitioner is a sex or violent offender (as defined in IC 11-8-8-5).

SECTION 4. IC 31-27-4-13, AS AMENDED BY P.L.138-2007, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) The department shall deny a license when an applicant fails to meet the requirements for a license. The department shall deny a license to an applicant who has been convicted of any of the following felonies:

- (1) Murder (IC 35-42-1-1).
- (2) Causing suicide (IC 35-42-1-2).
- (3) Assisting suicide (IC 35-42-1-2.5).

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- (4) Voluntary manslaughter (IC 35-42-1-3).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Battery (IC 35-42-2-1).
- (7) Domestic battery (IC 35-42-2-1.3).
- (8) Aggravated battery (IC 35-42-2-1.5).
- (9) Kidnapping (IC 35-42-3-2).
- (10) Criminal confinement (IC 35-42-3-3).
- (11) A felony sex offense under IC 35-42-4.
- (12) Carjacking (IC 35-42-5-2).
- (13) Arson (IC 35-43-1-1).
- (14) Incest (IC 35-46-1-3).
- (15) Neglect of a dependent ~~(IC 35-46-1-4(a)(1))~~
(IC 35-46-1-4(d)(1) and IC 35-46-1-4(a)(2)).
IC 35-46-1-4(d)(2)).
- (16) Child selling ~~(IC 35-46-1-4(d))~~; **(IC 35-46-1-4(g)).**
- (17) A felony involving a weapon under IC 35-47 or IC 35-47.5.
- (18) A felony relating to controlled substances under IC 35-48-4.
- (19) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.
- (20) A felony that is substantially equivalent to a felony listed in subdivisions (1) through (19) for which the conviction was entered in another state.

The department may deny a license to an applicant who has been convicted of a felony that is not listed in this subsection.

(b) The department shall send written notice by certified mail that the application has been denied and give the reasons for the denial.

(c) An administrative hearing concerning the denial of a license shall be provided upon written request by the applicant. The request must be made not more than thirty (30) days after receiving the written notice under subsection (b).

(d) An administrative hearing shall be held not more than sixty (60) days after receiving a written request.

(e) An administrative hearing shall be held in accordance with IC 4-21.5-3.

(f) The department shall issue a decision not more than sixty (60) days after the conclusion of a hearing.

SECTION 5. IC 35-46-1-4, AS AMENDED BY P.L.109-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. **(a) This section does not apply to an abortion performed in compliance with IC 16-34.**

(b) As used in this section, "dependent" includes an unborn child at any stage of development.

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(c) As used in this section, "having the care of a dependent" includes carrying an unborn child.

~~(a)~~ (d) A person having the care of a dependent, whether assumed voluntarily, ~~or~~ because of a legal obligation, **or for any other reason**, who knowingly or intentionally:

- (1) places the dependent in a situation that endangers the dependent's life or health;
- (2) abandons or cruelly confines the dependent;
- (3) deprives the dependent of necessary support; or
- (4) deprives the dependent of education as required by law;

commits neglect of a dependent, a Class D felony.

~~(b)~~ (e) However, the offense is:

- (1) a Class C felony if it is committed under subsection ~~(a)(1)~~, ~~(a)(2)~~, ~~or (a)(3)~~ **(d)(1), (d)(2), or (d)(3)** and:

(A) results in bodily injury; or

(B) is:

- (i) committed in a location where a person is violating IC 35-48-4-1 (delivery, financing, or manufacture of cocaine, methamphetamine, or a narcotic drug); or
- (ii) the result of a violation of IC 35-48-4-1 (delivery, financing, or manufacture of cocaine, methamphetamine, or a narcotic drug);

- (2) a Class B felony if it is committed under subsection ~~(a)(1)~~, ~~(a)(2)~~, ~~or (a)(3)~~ **(d)(1), (d)(2), or (d)(3)** and results in serious bodily injury;

- (3) a Class A felony if it is committed under subsection ~~(a)(1)~~, ~~(a)(2)~~, ~~or (a)(3)~~ **(d)(1), (d)(2), or (d)(3)** by a person at least eighteen (18) years of age and results in the death of a dependent who is less than fourteen (14) years of age; and

- (4) a Class C felony if it is committed under subsection ~~(a)(2)~~ **(d)(2)** and consists of cruel confinement or abandonment that:

(A) deprives a dependent of necessary food, water, or sanitary facilities;

(B) consists of confinement in an area not intended for human habitation; or

(C) involves the unlawful use of handcuffs, a rope, a cord, tape, or a similar device to physically restrain a dependent.

~~(c)~~ (f) It is a defense to a prosecution based on an alleged act under this section that:

- (1) the accused person left a dependent child who was, at the time the alleged act occurred, not more than thirty (30) days of age with an emergency medical provider who took custody of the

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child under IC 31-34-2.5 when:

(A) the prosecution is based solely on the alleged act of leaving the child with the emergency medical services provider; and

(B) the alleged act did not result in bodily injury or serious bodily injury to the child; or

(2) the accused person, in the legitimate practice of the accused person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the accused person's dependent.

~~(d)~~ (g) Except for property transferred or received:

(1) under a court order made in connection with a proceeding under IC 31-15, IC 31-16, IC 31-17, or IC 31-35 (or IC 31-1-11.5 or IC 31-6-5 before their repeal); or

(2) under IC 35-46-1-9(b);

a person who transfers or receives any property in consideration for the termination of the care, custody, or control of a person's dependent child commits child selling, a Class D felony.

SECTION 6. [EFFECTIVE JULY 1, 2009] **IC 35-46-1-4, as amended by this act, applies only to crimes committed after June 30, 2009.**

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